

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020-152-E

IN RE: Petition with Verification of South Bay of Mount Pleasant, LLC for Exception to Regulation 103-327(A))))))))	RESPONSE OF DOMINION ENERGY SOUTH CAROLINA, INC. TO PETITION WITH VERIFICATION FOR EXCEPTION TO REGULATION 103-327(A)
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BACKGROUND

Dominion Energy South Carolina, Inc. (“DESC”) hereby responds to the filing dated June 15, 2020 by South Bay at Mount Pleasant, LLC (“South Bay”). South Bay filed a Petition with Verification for Exception to Regulation 103-327(A) for its residential facility at Liberty Midtown Drive in Mount Pleasant (“South Bay Facility”).

DESC objects to South Bay’s request on the grounds that this request in no way satisfies the statutory requirements for granting an exception to Regulation 103-327(A). Moreover, DESC avers that Regulation 103-327(A) was adopted to promote and ensure the safety and security of electric power consumers; a master meter configuration does not afford the residents of South Bay (the actual consumers of the electricity) any of the customer protections provided by South Carolina law. DESC, therefore, requests in the alternative that should the Public Service Commission of South Carolina (“Commission”) grant the requested exception, then it should condition such grant on South Bay assuming all responsibility and liability associated with the delivery of energy beyond the master meter. In support of its objection, DESC respectfully would show unto the Commission the following key facts:

1. South Bay is a Continuing Care Retirement Community (“CCRC”) as defined by the State Continuing Care Retirement Community Act, S.C. Code Ann. § 37-11-10, *et seq.* (“SCCRC Act”).

2. The SCCRC Act is not related to the delivery of power and has no bearing or relationship to the safe delivery of power.

3. Currently, the South Bay Facility consists of one building that includes common area facilities, independent living units, and assisted living units (“Main Building”).

4. South Bay plans to construct “garden flats” that will be a collection of residences, not physically connected, across from the Main Building. These residences are planned and designed to “allow[s] for occupancy by residents that are more ambulatory and independent.” Exhibit A includes South Bay’s plans and drawings for the garden flats.

5. In contrast to the planned garden flats, current residents occupy more dormitory style accommodations in the Main Building. South Bay charges these residents a flat monthly rental fee, which includes “power, water, sewer, cable, wi-fi, and maintenance” as well as “[m]eals, housekeeping, access to wellness programming, and use of all common areas throughout the property...” South Bay receives electric service from DESC at a single, master meter for the Main Building.

6. The garden flats, however, are not designed to be and nor are they eligible to be master metered under Regulation 103-327(A). Should the Commission grant an exception, then the resulting structure would result in DESC delivering energy to a master meter with South Bay then assuming responsibility for the delivery of power from the master meter to the individual residences.

DISCUSSION

Regulation 103-327(A) states that “[a]ll service delivered to new multi-occupancy residential premises at which units of such premises are separately rented, leased or owned shall be delivered by an electrical utility on the basis of individual meter measurement for each dwelling.” The Commission may grant exceptions to the individual metering requirement “upon its determination that individual metering to such premises is impractical and unreasonable.”¹

Consideration of the Regulation was initiated when Commission Staff petitioned for a proposed rule to address the Public Utility Regulatory Policies Act of 1978 (“PURPA”) standard for master metering (“PURPA Standard”).² The PURPA Standard prohibits or restricts master metering “... to carry out the purposes of this chapter,” which are public health and safety.³ The Commission, after considering the intent of PURPA and reviewing “seven (7) volumes of transcribed testimony and twenty-two (22) separate hearing exhibits, which pertain to the nature and effect of the proposed rules and regulations with regard to master metering ...,”⁴ adopted its master meter rule. It is DESC’s understanding that the Commission was not required by PURPA to implement the regulatory standards; however, after careful review, the Commission adopted the standard for the purpose of public safety.⁵

In support of the relief requested, DESC presents as follows:

- i. South Bay is subject to Regulation 103-327(A) and should be Individually Metered.

As a CCRC, South Bay rents units and provides health-related services. At the same time, the South Bay Facility is a “... new multi-occupancy residential premises at which units of such

¹ Public Service Commission Regulation 103-327(B).

² See Order No. 80-611, Docket Nos. 18, 605 and 18, 606.

³ See *Id.*; 16 U.S.C. § 2623; 16 U.S.C. § 2601: “The Congress finds that the protection of the public health, safety, and welfare, the preservation of national security, and the proper exercise of congressional authority under the Constitution to regulate interstate commerce require ...” the establishment of PURPA.

⁴ See Order No. 80-611, Docket Nos. 18, 605 and 18, 606.

⁵ *Id.*

premises are separately rented, leased or owned ...” and is subject to Regulation 103-327(A). The SCCRC Act and Regulation 103-327(A) are not exclusive of the other, are administered by different South Carolina regulatory bodies for different purposes. Regulation 103-327(A) relates to the delivery of energy and was enacted to enhance the safety and reliability of power delivery to electric energy customers. South Bay’s classification as a CCRC is not instructive and has no impact on whether it is regulated under 103-327(A)—other than it is curious that a CCRC, given its clientele would seek to avoid this safety provision. As such, South Bay should be individually metered.

ii. Individual Metering is not Impractical and Unreasonable.

Regulation 103-327(B) does not apply to South Bay because individual metering is not impractical and unreasonable.

The functional difference between the garden flats and the other independent living units—which are akin to dormitory style rooms within the Main Building – is the design and independent living function.⁶ According to South Bay, the garden flats are structures that “allow for occupancy by residents that are more ambulatory and independent.” The design for the garden flats, as shown in Exhibit A, includes a building separate from the Main Building and separate from one other, like a row or cul-de-sac of houses. The garden flat floorplans include multiple bedrooms, closets, and bathrooms along with studies, kitchens, dining rooms, and living rooms. In simple terms these are distinct dwellings, regardless of whether they are called flats, cottages, houses or the like.

It would not be impractical or unreasonable to individually meter these units. Just like any subdivision or gated community, these housing structures are more naturally individually metered. In fact, it is so clear that this is not a situation where individual metering would be impractical and

⁶ The Commission previously granted an exception to Regulation 103-327(A) on the grounds that the retirement community units did not include individual kitchen facilities or resemble rooms common of a dorm or hotel. Order No. 85-219, Docket No. 18, 605.

unreasonable, DESC had no choice but to raise the associated safety policy concerns on the record and contest this matter for fear of being found in clear violation of the regulation from which South Bay seeks exception.⁷

Finally, construction of the garden flats is in the early stages and South Bay has not finalized its electric designs. It would not be impractical or unreasonable to enforce individual metering at this stage.

iii. South Bay must acknowledge responsibilities associated with Master Metering.

By requesting an exception to Regulation 103-327(A), South Bay must be aware of the responsibilities and safety risks involved with master metering. To clarify, DESC does not object to the Petition out of fear of lost revenue. Instead, DESC understands that master metering presents safety concerns that the Commission recognized when it adopted the individual metering requirement as discussed above.

To provide an analogy, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) provided that “when gas is purchased at a master meter and then is distributed ... to others who consume the gas ...” then “[o]perators of gas distribution systems, including master meter systems, must comply with [the pipeline safety regulations].”⁸ DESC recognizes that this analogy involves different regulations, but it illustrates the point that South Bay must assume all safety and reliability responsibility for delivering energy to these homes at all points beyond the master meter. If the Commission decides to grant the exception to Regulation 103-327(A), DESC respectfully requests that the Commission require South Bay as a condition of the waiver to assume

⁷ See Commission Order No. 2018-825 whereby the Commission admonished DESC to pay closer attention to Regulation 103-327(A).

⁸ See PHMSA Interpretation Response Details published September 17, 2010 upon request for interpretation of 49 CFR § 192.1 by the South Carolina Office of Regulatory Staff.

responsibility for the delivery of energy beyond the master meter and order South Bay to comply with applicable safety practices and requirements..

WHEREFORE, for the reasons stated herein, DESC objects to South Bay's request for a waiver of the individual metering requirement set forth in Commission Regulation 103-327(A). If the Commission grants the requested waiver, DESC respectfully requests such order to condition the waiver on South Bay assuming responsibility for the safety and reliability of power delivery from the master meter to the individual dwellings.

Respectfully Submitted,

s/ J. Ashley Cooper

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This 24th day of July, 2020.

Exhibit A

